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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

**1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Kingston Borough
500 Wyoming Avenue
Kingston, Pennsylvania 18704

Respondent.

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. CWA-03-2017-0161DN

I. STATUTORY AUTHORITY

1. The United States Environmental Protection Agency Region (EPA) has made the following findings of fact and issues this Administrative Order on Consent (AOC) to Kingston Borough, Pennsylvania (Borough or Respondent) pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

3. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to her the Administrator finds that any person is in violation of any permit condition or limitation implementing the CWA in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, she shall issue an Order requiring such person to comply with such requirement.

II. FINDINGS

A. NPDES and MS4 Programs

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b) provides that the Administrator may authorize a state to issue NPDES permits. Pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i), EPA retains the authority to take enforcement action for violations of NPDES permits.

5. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

6. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” *Id.* § 122.26(b)(13).

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) and 40 C.F.R. § 122.2 and § 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

8. Section 402 (p) of the CWA, 33 U. S. C. § 1342(p), provides that discharges from municipal separate storm sewer systems (MS4) may be subject to NPDES permitting requirements.

9. The term “municipal separate storm sewer system” or “MS4” includes, *inter alia*, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

10. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction

over disposal of . . . storm water. . . .; [and] (ii) Not defined as 'large' or 'medium' municipal separate storm sewer systems." 40 C.F.R. § 122.26(b)(16).

11. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. Pursuant to 40 C.F.R. §122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32. Among other things, a small MS4 requires a permit if it is located in an urbanized area as determined by the latest Decennial Census of the Bureau of the Census. See 40 C.F.R. §122.32(a)(1).

B. Pennsylvania's Small MS4 Program

12. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania (Commonwealth) to issue NPDES permits in 1978. In 1991, EPA authorized the Commonwealth to issue General NPDES Permits. With respect to stormwater discharges, the Commonwealth has incorporated by reference the requirements of the federal stormwater regulations. See, 25 PA Code Chapter 92a.32.

13. In December 2002 the Pennsylvania Department of Environmental Protection (PADEP) issued "NPDES Stormwater Discharges from Small Municipal Separate Storm Sewer Systems General Permit", which became effective in 2003 (2003 PAG-13). On October 16, 2003 the Borough submitted an NOI for coverage under the 2003 PAG-13. PADEP approved coverage on March 5, 2004 and assigned the Borough specific coverage number 2268.

14. On December 2, 2002, PADEP published a guidance document entitled "Municipal Separate Storm Sewer System (MS4) Stormwater Management Program Protocol," 3900-PM-WM0100h (Dec. 2, 2002) (Protocol) including specific best management practices.

15. The 2003 PAG-13, Part A.2, required permittees to, within the five-year permit term, implement a Stormwater Management Program (SWMP) meeting the following Minimum Control Measures (MCMs): (1) Public Education and Outreach on Stormwater Impacts, (2) Public Participation and Involvement, (3) Illicit Discharge Detection and Elimination, (4) Construction Site Runoff Control, (5) Post-Construction Stormwater Management in New Development and Redevelopment, and (6) Pollution Prevention and Good Housekeeping for Municipal Operations and Maintenance.

16. Further, the 2003 PAG-13, Part A.3., required Permittees to either: (a) implement the Protocol; or (b) develop and implement their own stormwater management program. In its October 16, 2003 NOI the Borough indicated that it would implement the Protocol. Therefore, the Protocol and its underlying requirements were incorporated into the 2003 PAG-13 coverage for the Borough's MS4.

17. The 2003 PAG-13, Part B.3.a, required permittees to “comply with all terms and conditions of this Permit.”

18. The 2003 PAG-13 expired on March 9, 2008, and was administratively extended, until PADEP issued a revised PAG-13, which became effective on March 10, 2013 (2013 PAG-13).

19. The Borough submitted an NOI for coverage under PAG-13 on September 10, 2012, indicating on the form that it was a reissuance of permit coverage and noting its prior permit number of PAG-13 2268.

20. The 2013 PAG-13 includes substantially the same requirements as the 2003 PAG-13, but incorporates the MCMs previously included in the Protocol into the permit itself (see Appendix A, 2013 PAG-13). The 2013 PAG-13 includes specific requirements for renewal permittees.

21. The 2013 PAG-13 adds requirements 1) for any permittee discharging to any portion of a waterbody for which an applicable Total Maximum Daily Load (TMDL) has been approved to develop and submit to PADEP for approval, and to insure implementation of, an MS4 TMDL Plan and 2) for any permittee located in and discharging to receiving watersheds draining to the Chesapeake Bay to develop, submit to PADEP for approval and implement a Chesapeake Bay Pollutant Reduction Plan.

C. Respondent

22. The Borough is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

23. Respondent is therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

24. At all times relevant to this AOC, Respondent owned and/or operated a regulated small MS4, located in the Kingston Borough, Luzerne County, Pennsylvania (Kingston Borough MS4).

25. Pursuant to 40 C.F.R. § 122.32(a)(1), the Kingston Borough MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit.

26. Therefore, the Kingston Borough MS4 is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b) (16).

27. Respondent is a municipal member of the West Side Council of Governments which is affiliated with the Pennsylvania Association of Council of Government. See, Local Ordinance, Chapter 19, Article XI.

28. The West Side Council of Government municipal members include Edwardsville, Exeter, Forty Fort, Kingston, Larksville, Luzerne, Plymouth, Swoyersville, West Pittston, West Wyoming and Wyoming.

29. The Kingston Borough MS4 discharges stormwater to Toby's Run and the Susquehanna River.

30. Toby's Run and the Susquehanna River, to which storm water flows and, at all times relevant to this Order, has flowed from the Kingston Borough MS4, are each a "water of the United States" as that term is defined at 40 C.F.R. § 122.2.

31. The 2013 PAG-13 authorizes discharges of storm water from the Borough's MS4, only in accordance with the conditions of the Permit.

32. On July 29 and 30, 2014, EPA and its duly-authorized representatives conducted an inspection and assessment of the Borough's stormwater management program (Inspection). The Borough had been subject to the 2003 PAG-13 and was currently subject to the 2013 PAG-13 (collectively PAG-13 Permits).

D. Violations

33. On November 12, 2014 EPA sent the Borough a report of the Inspection (Inspection Report). The Inspection Report identified deficiencies in the Borough's SWMP regarding implementation of five of the six MCMs: MCM #1 - Public Education and Outreach; MCM# 3 - Illicit Discharge Detection and Elimination; MCM #4 – Construction Site Stormwater Runoff Control; MCM#5 - Post-Construction Stormwater Management (PCSM) in New and Redevelopment Activities; and MCM#6 - Pollution Prevention/Good Housekeeping for Municipal Operations.

34. Respondent's failure to fully implement all six MCMs in accordance with the PAG-13 Permits violates the PAG-13 Permits and Section 301 of the CWA, 33 U.S.C. §1311.

35. Based upon a review of the Inspection Report, the Borough is out of compliance with the requirements of its stormwater management program and must undertake additional actions to achieve compliance.

IV. ORDER FOR COMPLIANCE

Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to her the Administrator finds that any person is in violation of any condition or limitation which implements Section 1342 of the Act, she shall issue an order requiring such person to comply with such condition or limitation.

Therefore, this 24 day of July, 2017, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. §1319(a), and CONSENTS to conduct the following activities:

36. Within sixty (60) days of receipt of this Order, unless otherwise stated, Respondent shall undertake the following to comply with PAG-13 and the Act, and shall provide EPA with copies of:

- i. A list of specific target audiences within the area served by the Borough's MS4 (see MCM #1, Best Management Practice (BMP) #2) that will be addressed with a message to reduce or eliminate practices and behaviors that contribute to polluted storm water runoff. Utilize databases or spreadsheets to record and track this information and to allow for easy identification and creation of mailing lists easily retrievable.
- ii. A written illicit discharge and detection program that includes:
 - a. A detailed standard operating procedure(s) (SOP) for identifying priority areas,
 - b. A detailed SOP for screening outfalls in priority areas during varying seasonal and meteorological conditions, not limited to dry weather conditions as noted in the Borough's response.
 - c. A detailed SOP for identifying sources of illicit discharges,
 - d. A detailed SOP for eliminating an illicit discharge,
 - e. A detailed SOP for assessing the potential for illicit discharges caused by the interaction with sewage disposal systems (e.g. smoke testing), and
 - f. A detailed SOP for program documentation, evaluation, and assessment.
- iii. A written updated inventory of PCSM BMPs compliant with MCM #5, BMP #6.
- iv. A detailed SOP for a municipal employee (and contractors) training program that addresses appropriate topics to further the goal of preventing or reducing pollutants from municipal operations to your regulated MS4. This SOP must include all required elements under MCM #6, BMP #3 and must be specific to

Kingston Borough's MS4.

37. All documents required by this Order shall be accompanied by a certification signed by a responsible municipal official, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____

All documents required herein shall be submitted to:

Rebecca Crane
Enforcement Officer
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

38. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as

defined below).

39. This Order does not constitute a waiver or modification of the terms or conditions of any MS4 Permit. Compliance with the terms and conditions of this Consent Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

40. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Consent Order.

41. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

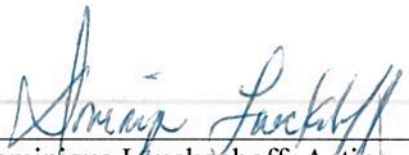
42. By entering into this Consent Order, Respondent does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

This ORDER is effective upon receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 7-24-17

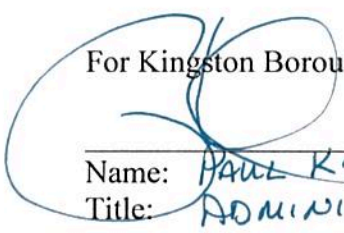


Dominique Leuckenhoff, Acting
Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

Date: 5-19-17

For Kingston Borough



Name: PAUL KEATING
Title: ADMINISTRATOR